DRAFT

STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended:	**Enrolled**	Bill No:	**SB 1494**
Tax:	**Property Special Taxes**	Author:	**Committee on Revenue and Taxation**
Related Bills:	**AB 2408 (Smyth)**	Position:	**Support as Sponsor**

BILL SUMMARY

This bill contains various **Board of Equalization** (Board) sponsored provisions.

Related to the **Property Taxes**:

- Amends Section 61 of the Revenue and Taxation Code[1], related to **change in ownership provisions** for certain leasehold interests, to recast its provisions to correct a renumbering error.
- Amends Section 63.1, related to the **parent-child change in ownership exclusion**, to add the trustee of a trust to the list of persons who can sign claims for the exclusion on behalf of eligible transferors and transferees.
- Amends Section 69.5, related to **base year value transfers for those over 55 and the disabled**, to expressly state that such transfers are available when the original property is held in a trust, provided the claimant is a trustor or present beneficiary of that trust.
- Amends Section 218 to establish a generic provision to allow **disaster victims** to keep the homeowners' exemption when the governor proclaims a state of emergency.
- Amends Section 401.10 to extend provisions related to **the assessment of intercounty pipeline rights-of-way** that are otherwise scheduled to sunset on January 1, 2011.
- Amends Section 1604**,** related to **assessment appeals** that have not been decided, to clarify that the two year period before a property owner's opinion of value becomes controlling applies to supplemental and escape assessment appeals.
- Repeals Sections 1624.3 and 1636.2, related to **assessment appeal board members and hearing officers**, because they are duplicative of Section 1612.5.
- Repeals Section 1636.5, related to **hearing officers,** because it is duplicative of Section 1612.7.
- Amends Section 4831, related to the **statute of limitations on assessment roll corrections** to recast its provisions for clarity.
- Amends Section 5096, related to **property tax refunds resulting from an assessment appeal,** to correct a cross reference error.

Related to Special Taxes and Fees:

- Amends Sections 41030, 41031, 41032, 41136.1, 41137, 41137.1, 41138, 41139, 41140, 41141, and 41142 to correct the responsible state agency reference in the

[1] All code section references are to the Revenue and Taxation Code unless otherwise specified.

Emergency Telephone Users (911) Surcharge Act to conform to the Governor's Reorganization Plan 1.

- Amends Sections 45855, 45863, 45981, and 45982 and amends Public Resources Code Section 42463 to correct the responsible state agency reference in the **Integrated Waste Management Fee Law** to conform to statutory changes.

ANALYSIS

Change in Ownership – Leasehold Interests
Revenue and Taxation Code Section 61(c)

CURRENT LAW

Under existing property tax law, real property is reassessed to its current fair market value when there is a "change in ownership." Revenue and Taxation Code Section 61 lists specific situations considered to be a change in ownership. Subdivision (c) of Section 61 provides that the creation, termination, and transfer of certain leasehold interests with a term of 35 years or more can be a change in ownership resulting in reassessment.

PROPOSED LAW

This bill would amend subdivision (c) of Section 61 to correct a renumbering error therein by adding paragraph and subparagraph designations to the previously undesignated text and making complete sentences for each provision.

BACKGROUND

AB 3076 (Ch. 364, Stats. 2006) amended subdivision (c) of Section 61 to include floating homes in provisions related to the change in ownership consequences of manufactured homes located on rented or leased land. However, these amendments also mistakenly deleted the "(1)" at the beginning of the first sentence of subdivision (c). Presumably, it was deleted because it appeared to be a paragraph designation while the other two paragraphs within subdivision (c) were not numbered. However, the "(1)" was actually part of a numbered list within the first sentence of the first paragraph. As a result, this leaves the second number in the list ("(2)") floating in the first sentence, which leads to technical impreciseness.

COMMENT

The creation, termination, and transfer of certain leasehold interests with a term of 35 years or more can be a change in ownership resulting in reassessment. This bill corrects a drafting error inadvertently created by recent amendments to Section 61(c) made by Ch. 364, Stats. 2006 (AB 3076). These technical amendments correct a dangling "(2)" within the first sentence as well as improve the readability of the subdivision.

Parent-Child Change in Ownership Exclusion - Trusts
Revenue and Taxation Code Section 63.1

CURRENT LAW

Under existing property tax law, property is reassessed to its current fair market value whenever there is a "change in ownership." However, a change in ownership exclusion is available for transfers of property between parents and children under certain conditions. Revenue and Taxation Code Section 63.1 details the terms and conditions to receive the parent-child change in ownership exclusion.

Transfers of real property between parents and children through the medium of a trust are eligible for the parent-child exclusion. Section 63.1(c)(9) provides that the term "transfer" includes any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust. For change in ownership purposes, one looks through the trust to determine who has present beneficial ownership of the real property held in the trust. If the requirements of Section 63.1 are otherwise satisfied, transfers to and from a trust are eligible for the exclusion.

Relevant to this bill, one requirement is that the parties involved must file and sign a claim form with the assessor certifying to the parent-child relationship and providing specified information before the exclusion can be granted. Section 63.1(d) lists the persons who must file a claim and provide the required certifications and does not expressly list the trustee of the transferee's or transferor's trust as a person that may sign the claim form or provide the required certifications.

PROPOSED LAW

This bill amends Section 63.1 to add the trustee of a trust to the list of persons who can sign parent-child and grandparent-grandchild claims and make the required certifications on behalf of eligible transferors and transferees.

BACKGROUND

The Board advises that a trustee can sign the parent-child claim form since the trustee has the fiduciary responsibility to carry out the terms of the trust and can sign legal documents on behalf of the trust. This guidance is found in Letter To Assessors (LTA) 2008/018, question 50.

However, despite the express LTA guidance, because Section 63.1(d) does not expressly list trustees, this causes uncertainty and confusion for property owners and tax practitioners who address this issue infrequently. As trusts have become more popular as estate planning tools, Board staff is increasingly addressing these ongoing concerns.

COMMENT

Claims for the parent-child change in ownership must be filed, signed, and may be inspected by specified persons. This bill expressly adds the trustee of a transferee's or transferor's trust to that list. This amendment reflects current administrative practices and serves to provide clarity to property owners and tax practitioners.

Base Year Value Transfers - Trusts
Revenue and Taxation Code Section 69.5

CURRENT LAW

Revenue and Taxation Code Section 69.5 provides that persons over the age of 55 years and disabled persons may, subject to many conditions and limitations, transfer the base year value of their primary residence to a newly acquired or constructed replacement residence.

Section 69.5(d) provides that the property tax relief provided by this section shall be available to a claimant who is the co-owner of the original property as a joint tenant, a tenant in common, or a community property owner. Property owned by a trust is not expressly addressed in Section 69.5[2].

PROPOSED LAW

This bill amends Section 69.5 to expressly state that a base year value transfer is available to a claimant where the original property is held in a trust provided the claimant is a trustor or present beneficiary of the trust.

BACKGROUND

Property owned by a trust is not expressly addressed in Section 69.5, as a result assessors, taxpayers, and attorneys have questioned whether a base year value can be transferred if either the original property or replacement dwelling is held in trust.

The Board has issued guidance on this issue in LTA 2006/010, question B2. In this LTA, the Board states that the taxpayer may file as a claimant if he files as the present beneficial owner of the trust (not as trustee of the trust). For property tax purposes, the property owner is the person who has the present beneficial interest of a trust (with the exception of a Massachusetts or business trust, which is regarded as a legal entity); the trustee holds legal title to the trust property, but does not have a present beneficial ownership interest unless the trustee is also a named beneficiary of the trust. Therefore, an individual who has the present beneficial interest of a trust is considered the claimant for purposes of Section 69.5 and should receive the base year value transfer benefit if all of the requirements of the section are met.

However, despite the LTA guidance, because Section 69.5 does not expressly address trusts, this causes uncertainty and confusion for property owners and tax practitioners who address this issue infrequently. As trusts have become more popular as estate planning tools, Board staff is increasingly addressing these ongoing concerns.

COMMENT

Base year value transfers for principal places of residence are available to persons over the age of 55 and the disabled. The bill expressly provides that a person who owns a home that is held in trust may qualify for a transfer if the person is the present beneficiary of the trust. This amendment reflects current administrative practices and serves to provide clarity to property owners and tax practitioners.

[2] With the exception of Section 69.5(n), related to access to confidential claims for base year value transfers, which provides that the trustee of a trust in which the claimant or the claimant's spouse is a present beneficiary may have access to the claim.

Disaster Relief - Homeowners' Exemption
Revenue and Taxation Code Section 218

CURRENT LAW

Article XIII, Section 3(k) of the California Constitution exempts from property tax the first $7,000 of the full value of a dwelling when occupied by an owner as his or her principal residence. This exemption is commonly referred to as the "homeowners' exemption."

Revenue and Taxation Code Section 218 details the qualifications for the homeowners' exemption authorized by the constitution. Eligibility is generally continuous once granted. However, if a property is no longer owner-occupied, is vacant, or is under construction on the lien date (January 1), the property is not eligible for the exemption for the upcoming tax year.

Relevant to natural disaster situations, homes that are totally destroyed on the lien date for a particular fiscal year (that is January 1 for the forthcoming fiscal year that begins July 1) are not eligible for the homeowners' exemption. For example, a home destroyed on or before January 1, 2010 is not eligible for the homeowners' exemption on the 2010-11 property tax bill.[3]

Special purpose legislation has been enacted in recent years for most natural disasters to provide that a dwelling destroyed in specified events for which the Governor declared a state of emergency will not be disqualified as a "dwelling" or be denied the homeowners' exemption solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

PROPOSED LAW

This bill would amend Section 218 to provide that each time there is a Governor declared disaster a property that has been destroyed by the disaster will continue to be eligible to receive the homeowners' exemption. In addition, this bill would codify current administrative practice as it relates to homes that are partially damaged in any type of disaster. The amendments to Section 218 would address eligibility for the exemption for three scenarios:

Partial Damage – Any Disaster. A dwelling that is not occupied on the lien date, because it had been partially destroyed or damaged in a disaster (including Governor declared disasters or any other type of disaster including a stand alone disaster such as a home fire) where the owner's absence is temporary and the owner intends to return to the home when possible to do so, would continue to be eligible to receive the homeowners' exemption. *§218(b)(2)*

Total Destruction – Governor Declared Disaster. A dwelling that has suffered total destruction in a Governor declared disaster would continue to be eligible to receive the homeowners' exemption. *§218(b)(3)*

Total Destruction – Non-Governor Declared Disaster. A dwelling that was previously eligible for the homeowners' exemption but no longer exists on the lien date because it suffered total destruction in a disaster that was not a Governor declared disaster, would not be eligible for a homeowners' exemption until the structure is replaced and occupied. *§218(b)(2)*

[3]A home destroyed on or after January 1, 2009, would continue to be eligible for the exemption on the 2009-10 property tax bill. However, if the home has not been rebuilt and occupied by the next lien date, January 1, 2010, it would not be eligible for the homeowners' exemption on the 2010-11 property tax bill.

RELATED LEGISLATION

In 2006, the Governor's Office of Planning and Research (OPR) sponsored similar legislation with its AB 3039 (Houston). This bill failed passage in Assembly Appropriations Committee.

Additionally, in 2006, the Board sponsored legislation contained in SB 1607 (Senate Revenue and Taxation Committee) which was limited in scope to the homeowners' exemption provisions. These provisions were deleted from SB 1607 in the Assembly Revenue and Taxation Committee after the Assembly Appropriations Committee did not approve AB 3039 (Houston).

The Board sponsored similar standard purpose legislation with respect to retaining the disabled veterans' exemption after a Governor declared disaster with Senate Bill 1495 (Stats. 2008, Ch. 594). That bill amended Section 279 to allow the disabled veterans' exemption to remain in effect if a home is damaged or destroyed in any disaster for which the Governor proclaimed a state of emergency.

COMMENTS

1. **Purpose.** This bill would eliminate the need for special purpose legislation and expressly codify existing advice relating to a home that suffers partial damage as opposed to total destruction. It also removes the special purpose provisions from Section 218 in order to restore this section of law to the basic fundamentals. It will improve efficiency and save on legislative bill printing costs by avoiding the need for double and triple joining language in years with multiple disasters. In addition, individual members could still carry legislation for their district for property tax revenue backfill purposes.

2. **The frequent amendments to Section 218 are tedious and complex.** Individual members would still carry legislation for their district for property tax revenue backfill purposes. Since the bills for property tax reimbursement are newly added sections of code such bills do not require double joining amendments. However, with respect to the homeowners' exemption, there is a need for double and triple joining language in years with multiple disasters. Further complicating this matter is that Section 218 is a foundational section for the homeowners' exemption. Thus, other legislation seeking to modify the exemption, such as proposed increases or administrative changes must also be tracked for chaptering out issues.

3. **This bill provides certainty by automating the process.** It is also environmentally friendly by reducing legislative bill printing costs.

4. **Governor's signing message on special purpose legislation.** Governor Schwarzenegger included a signing message in 2005's AB 18 (Ch. 624, Stats. 2005) requesting that standard purpose legislation be enacted to avoid the need to introduce special purpose legislation each year. The following table lists the special purpose legislation enacted in recent years.

Disaster	Year	Legislation
Wildfires – Multiple Counties	2009	Stats. 2009, Ch. 299 (AB 1568)
Fire, Wind, Storms – Multiple Counties	2008	Stats. 2008, Ch. 386 (SB 1064)
Zaca Fire – Santa Barbara and Ventura	2007	Stats. 2007, Ch. 224 (AB 62)
Angora Fire – El Dorado County	2007	Stats. 2007, Ch. 224 (AB 62)

Disaster	Year	Legislation
Freeze	2007	Stats. 2007, Ch. 224 (AB 62)
Day and Shekell Fires - Ventura County	2006	Stats. 2007, Ch. 224 (AB 62)
Northern California Storms, Floods & Mudslides	2006	Stats. 2006, Ch. 396 (AB 1798)
Northern California Storms, Floods & Mudslides	2006	Stats. 2006, Ch. 897 (AB 2735)
Shasta Wildfires	2005	Stats. 2005, Ch. 623 (AB 164)
Southern California Storms, Floods & Mudslides	2005	Stats. 2005, Ch. 624 (AB 18)
Southern California Storms, Floods & Mudslides	2005	Stats. 2005, Ch. 622 (SB 457)
San Joaquin levee break	2004	Stats. 2004, Ch. 792 (SB 1147)
San Simeon earthquake	2003	Stats. 2004, Ch. 792 (SB 1147)
Southern California wildfires	2003	Stats. 2004, Ch. 792 (SB 1147)
Oakland/Berkeley Hills fire	1992	Stats. 1992, Ch.1180 (SB 1639)
Los Angeles civil riots	1991	Stats. 1992, Ch. 17X (AB 38 X)

5. **Parity with Disabled Veterans' Exemption.** This bill is consistent with legislation enacted in 2008 for the disabled veterans' exemption.

6. **Partial Damage.** Board staff has opined that a temporary absence from a dwelling because of a natural disaster, such as a flood or fire, will not result in the loss of the homeowners' exemption for those properties temporarily vacated for repairs. (See Letter To Assessors 82/50, Question G16.) Thus, this provision codifies current guidance and administrative practices.

7. **Related Bills.** AB 1782 (Harkey) also proposes to amend Section 218 to make the homeowners' exemptions provisions standard for all Governor declared state of emergencies without the need for special purpose legislation. It also makes property tax backfill automatic which this bill does not propose. In addition AB 1662 (Portantino) and AB 1690 (Chesbro) provide special purpose legislation for disasters occurring in 2009 and 2010. In addition, SB 1430 (Walters) proposes unrelated amendments to Section 218 to increase the amount of the homeowners' exemption for seniors.

Intercounty Pipeline Rights-of-Way
Revenue and Taxation Code Section 401.10

CURRENT LAW

Revenue and Taxation Code Section 401.10 sets forth the assessment methodology used to determine the value of intercounty pipeline rights-of-way. These provisions apply for each tax year from the 1984-85 tax year to the 2010-11 tax year. This section of law is scheduled to be repealed on January 1, 2011.

PROPOSED LAW

This bill amends Section 401.10 to extend the codified valuation methodology to the 2015-16 tax year. This extends the provisions for five more years. The section of law would be repealed by its own provisions on January 1, 2016.

BACKGROUND

The valuation methodology for intercounty pipeline rights-of-way was first established in 1996 by AB 1286 (Stats. 1996, Ch. 801). It codified an agreement reached between county assessors and intercounty pipeline rights-of-way owners after litigation transferred assessment from the Board to local county assessors. The methodology was subsequently extended for ten more years in 2000 by AB 2612 (Stats. 2000, Ch. 607).

The methodology is based upon a prescribed dollars-per-mile schedule that determines value according to the "density classification" of the property as follows: $20,000 per mile for high density; $12,000 per mile for transitional density; and $9,000 per mile for low density. The value determined using the methodology has a rebuttable presumption of correctness. In addition, the property owner is precluded from challenging the legality of the assessment. If the methodology is not used, then the assessor's presumption of correctness is negated and the property owner may challenge the legality of the assessment.

Commencing in 1993 local county assessors were required to begin to assess intercounty pipeline rights-of-way after a lawsuit ruling that the prior assessment of these rights by the Board was outside of its assessment jurisdiction. The court ruled that, while the pipelines themselves are properly assessed by the Board, the rights-of-way through which the pipelines run were outside of the Board's assessment jurisdiction. County assessors were directed to make these assessments instead. (*Southern Pacific Pipe Lines, Inc*. v. *State Board of Equalization* 14 Cal.App.4th 42)

The initial transition from state to local assessment had several problems. For one, the intercounty nature of these interests made the valuation process difficult under traditional local assessment procedures. Additionally, the valuation of these interests by the various counties was not uniform. Furthermore, there were contentions regarding legality of the assessments. Thus, to avoid protracted litigation over how these assessments would be made at the local level, property owners and counties negotiated the assessment methodology codified in Section 401.10. These provisions are scheduled to sunset after the 2010-11 fiscal year.

COMMENTS

1. **Purpose.** The valuation methodology in place since 1996 has proven to work well. If Section 401.10 sunsets, then there would be a void in existing law with respect to property tax assessment of intercounty pipeline rights-of-way.
2. **Board Sponsored at Request of Interested Parties.** The California Assessors' Association and taxpayer representatives have requested that these provisions be extended and have requested that the Board sponsor legislation as part of its annual Property Tax Omnibus measure. The Board took a neutral position on the 1996 legislation establishing the methodology and supported the 2000 legislation extending its provisions for 10 years.

Assessment Appeals – Taxpayers' Opinion of Value
Revenue and Taxation Code Section 1604

CURRENT LAW

A taxpayer may appeal the assessed value of his or her property for property tax purposes by filing an application for reduction in assessment with the county assessment appeals board. Revenue and Taxation Code Section 1603, subdivision (a), allows taxpayers to file applications appealing assessments on the regular assessment roll (the annual assessment), and Section 1603, subdivisions (b)-(d), prescribe the deadlines for filing such applications. Section 1605, subdivision (b), allows taxpayers to appeal assessments made outside the regular assessment period (escape and supplemental assessments) by filing applications under Section 1603, subdivision (a), but within the time periods prescribed by Section 1605, subdivisions (b), (c), and (e).

In either case, the application requires that the taxpayer state an opinion of value. In order to encourage assessment appeals boards to hear and decide applications in a timely manner, Section 1604, subdivision (c) provides that if the appeals board fails to hear evidence and make a final determination on the application within two years of the application, the taxpayer's opinion of market value, as reflected on the application, will be the value upon which taxes are to be levied for the tax year covered by the application. If the applicant's opinion of value is enrolled, because the application was not timely heard and decided, that value is to remain on the roll until the appeals board makes a final determination on that application.

PROPOSED LAW

This bill makes various amendments to Section 1604 to clarify that the two year period that an assessment appeals board has to decide appeals before a property owner's opinion of value becomes controlling applies to supplemental and escape assessment appeals.

BACKGROUND

The Tax Section of the California State Bar annually sponsors an informal working meeting for tax administrators and tax professionals to discuss issues affecting California tax administration in an objective environment. The meeting is referred to as "Eagle Lodge West."

One property tax issue discussed at the 2009 meeting was a lack of clarity with respect to whether the two-year time limit for hearing local property tax appeals applies to appeals of supplemental and escape assessments filed under Section 1605, in addition to appeals of assessments on the regular roll that are filed under Section 1603.

Apparently, some readers are uncertain about whether the two-year period for hearing and deciding appeals in Section 1604, subdivision (c), applies to applications for reductions of escape and supplemental assessments. This uncertainty appears to be caused by redundant language in the first sentence of Section 1604, subdivision (b)(1), and references to Section 80, subdivision (a), in Section 1604, subdivision (d). However, the legislative history regarding the enactment and subsequent amendments to Section 1604, subdivision (c), do not contain any statements indicating that the Legislature intended to limit the application of subdivision (c) to applications appealing regular assessments. In addition, in LTA 1995/56 the Board opined that "[w]hile not free of doubt, we are of the opinion that the two-year period also applies to those

applications filed outside the regular period under Section 1605" and there no longer seems to be any dispute.

Therefore, the group drafted the clarifying, non-substantive amendments included in this bill to address this issue:

- Deleted the first sentence of subdivision (b) (1) of Section 1604 which states "(a)ny taxpayer may petition the board for a reduction in an assessment by filing an application pursuant to Section 1603" to remove the implication that the provisions of Section 1604, subdivision (c), are limited to applications appealing assessments on the regular roll filed pursuant to Section 1603.
- Modified the second sentence of subdivision (b)(1) of Section 1604 by adding "filed pursuant to Section 1603" to clarify that the remaining provisions in subdivision (b)(1) continue to apply to applications filed under Section 1603.
- Deleted the two references to Section 80, subdivision (a), in Section 1604(d)(1) and (d)(2), so that they would no longer create an ambiguity with subdivision (c).
- Deleted a date reference in Section 1604(c) that is now effectively obsolete for applications filed post 01/01/83.

In addition, for internal consistency with terms used throughout the text, the following clarifying amendments were made:

- Substitute "It" for the "The board;"
- Substitute "application" for "petition;"
- Substitute "county board" for "assessment appeals board;"
- Substitute "applicant' for "taxpayer;"
- Substitute "tax year or tax years" for "tax year;" and
- Substitute "opinion of value" for "opinion of market value."

COMMENTS

1. **Two Year Period to Hear Appeals Applies to Supplemental and Escape Assessments.** This bill makes the changes recommended by Eagle Lodge West participants as described in detail above. These changes are intended to be nonsubstantive. The fundamental purpose is to clarify that the two year period that an assessment appeals board has to decide appeals before a property owner's opinion of value becomes controlling is applicable to supplemental and escape assessment appeals.
2. **Board Sponsored at Request of Interested Parties**. The Tax Section of the State Board has requested that the amendments agreed to by the working group be sponsored by the Board and enacted into law as part of the Board's annual property tax omnibus bill.

Assessment Appeal Representation - Prohibition
Revenue and Taxation Code Sections 1624.3 & 1636.2

CURRENT LAW

Revenue and Taxation Code Section 1612.5 bars certain county officials and employees from representing, for compensation, an assessment appeal applicant in the county in which the official serves or the employee works. The provisions apply to assessment appeals board members and alternate members, assessment hearing officers, employees of the clerk of the board of supervisors, employees of the assessor's office, and members of the county counsel staff who either advise the assessment appeals board or who represent the assessor in assessment appeal proceedings.

This prohibition is *additionally* found in Section 1624.3 for assessment appeal board members and alternate members and in Section 1636.5 for assessment hearing officers.

PROPOSED LAW

This bill repeals Sections 1624.3 and Section 1636.2 which are duplicative of provisions found in Section 1612.5 which provides a comprehensive list of all persons barred from representing applicants for compensation.

BACKGROUND

Last year, legislation sponsored by the California Association of Clerks and Election Officials amended Section 1612.5 to create a comprehensive list of any person barred from representing an applicant for compensation -- AB 824 (Ch. 277, Stats. 2009 – Harkey). Section 1624.3, related to assessment appeals board members and alternate members, and Section 1636.2, related to assessment hearing officers, were not repealed at that time. Consequently, these sections of code are redundant and should be repealed.

COMMENT

This bill repeals redundant sections of code. Section 1612.5 provides a comprehensive list of all persons prohibited from representing persons in appeal applications for compensation in one section of law which serves to simplify the tax law. Thus, Section 1624.3 and Section 1636.2 should be repealed.

Assessment Appeal Hearing Officers – Conflict of Interest Safeguards
Revenue and Taxation Code Section 1636.5

CURRENT LAW

Revenue and Taxation Code Section 1612.7 requires certain county officials and employees, including assessment appeal hearing officers, to immediately notify the clerk of the assessment appeals board when they file an assessment appeal application on their own behalf. It also requires these individuals to notify the clerk immediately upon his or her decision to represent his or her spouse, parent or child in an assessment appeal matter. As a conflict of interest safeguard, such appeals may not be heard by the regular assessment appeals board for the county. Instead, the appeals must be heard by a special assessment appeal board panel as provided by Section 1622.6.

This requirement is *additionally* found in Section 1636.5 with respect to assessment hearing officers.

PROPOSED LAW

This bill repeals Sections 1636.5 which is duplicative of provisions found in Section 1612.7 which provides a comprehensive list of all persons required to notify the clerk when an appeal is filed as well as provide for a special appeals panel.

BACKGROUND

Last year, legislation sponsored by the California Association of Clerks and Election Officials amended Section 1612.7 to create a comprehensive list of all persons subject to the notification provisions to the clerk of the appeals board and all appeals required to be heard by a special appeals panel -- AB 824 (Ch. 277, Stats. 2009 – Harkey). Section 1636.5, related to assessment hearing officers, was not repealed at that time. Consequently, this section of code is redundant and should be repealed.

COMMENT

This bill repeals a redundant section of code. Section 1612.7 provides a comprehensive list of all persons required to notify the clerk of the appeals board in one section of law. A single location in the tax code serves to simplify the tax law. Thus, Section 1636.5 should be repealed.

Roll Corrections – Statute of Limitations
Revenue and Taxation Code Section 4831

CURRENT LAW

Revenue and Taxation Code 4831 provides that the assessor may initiate certain corrections to the assessment roll that he or she prepared after it has been delivered to the auditor. Generally, after the roll has been turned over to the auditor, incorrect entries may be corrected within four years of making the assessment. However, if an error is discovered as a result of an audit of the taxpayer's books and records, the error may be corrected within six months after completion of the audit. Section 4831 expressly excludes from correction any error that involves the exercise of value judgment, unless the error relates to the failure to reflect a decline in market value for the prior year (i.e., a one year grace period to process Proposition 8 reductions). Section 4831 also expressly excludes from the four year time limit escape assessments caused by the assessee's failure to report required information.

PROPOSED LAW

This bill recasts the provisions of Section 4831 for clarity.

BACKGROUND

The Tax Section of the California State Bar annually sponsors an informal working meeting for tax administrators and tax professionals to discuss issues affecting California tax administration in an objective environment. The meeting is referred to as "Eagle Lodge West."

One property tax issue discussed at the meeting was that Section 4831 was confusing and difficult to read in its current form. The group drafted the following clarifying, non-substantive amendments to improve Section 4831:

- Restates subdivision (a) for clarity; and
- Substitutes "assessor value judgment" for "a value" and substitutes "shall only be" for "shall be" in subdivision (b).

COMMENTS

1. **Statute of Limitations on Making Roll Corrections.** This bill makes the changes to Section 4831 recommended by Eagle Lodge West participants as described above. These changes are intended to be nonsubstantive. The fundamental purpose is to recast Section 4831 to make its provisions more clear for the reader.
2. **Board Sponsored at Request of Interested Parties**. The Tax Section of the State Board has requested that the amendments agreed to by the working group be sponsored by the Board and enacted into law as part of the Board's annual property tax omnibus bill.

Property Tax Refunds
Revenue and Taxation Code Section 5096

CURRENT LAW

Section 5096 outlines the parameters under which property taxes may be refunded. One provision concerns what happens when the property taxes paid exceeded the equalized value of the property under Section 1613. This means that when the assessed value of the property is reduced in an assessment appeal, a property tax refund will be issued.

Senate Bill 1063 (Stats. 2003, Ch. 199), in effect January 1, 2004, repealed Section 1613 and its provisions were amended into Section 1610.8. Thus, the cross reference in Section 5096 to Section 1613 is no longer correct.

PROPOSED LAW

This bill amends Section 5096 to correct the statutory cross reference to Section 1610.8.

COMMENT

This is routine technical maintenance of the code.

Correct State Agency Reference in the Emergency Telephone Users (911) Surcharge Act
Revenue and Taxation Code Sections 41030, 41031, 41032, 41136.1, 41137, 41137.1,41138, 41139, 41140, 41141 and 41142

CURRENT LAW

Under existing law, the 911 Surcharge Act (Part 20 (commencing with Section 41001) of Division 2 of the RTC) imposes a surcharge on amounts paid by every person in the state for (1) intrastate telephone communication services in this state, and (2) Voice over Internet Protocol (VoIP) service that provides access to the "911" emergency system by utilizing the digits 9-1-1 by any service user in this state.

Until January 1, 2010, Section 41030 required the Department of General Services (DGS) to annually determine the surcharge rate that it estimates will produce sufficient revenue to fund the current fiscal year's 911 costs. The DGS was required to make its determination of the surcharge rate each year no later than October 1 and notify the Board of the new rate, pursuant to Section 41031. Immediately upon notification by the DGS, Section 41032 required the Board to publish the new rate in its minutes and notify service suppliers of the new rate, as described. The surcharge rate is presently 0.50 percent of the amounts paid for intrastate telephone service and VoIP service in this state.

The surcharge is paid to the Board and deposited in the State Treasury to the credit of the State Emergency Telephone Number Account in the General Fund. In part, the funds in this account are used to pay the DGS for its cost to administer the 911 emergency telephone number system.

Effective May 10, 2009, the Governor's Reorganization Plan (GRP) 1 consolidated state information technology functions under office of the State Chief Information Officer (OCIO). Among other things, the GRP 1 transferred all the duties, functions, employees, property, and related funding of the DGS's Division of Telecommunications

to the OCIO. The Telecommunications Division was previously responsible for determining the 9-1-1 surcharge rate each year and for the administration of the 9-1-1 emergency telephone number system.

PROPOSED LAW

This bill would amend Section 41030, 41031, 41032, 41136.1, 41137, 41137.1, 41138, 41139, 41140, 41141, and 41142 of the RTC to simply make the necessary state agency reference correction, from the DGS to the office of the OCIO, under the 911 Surcharge Act to conform to the GRP 1.

COMMENT

Purpose. This provision would simply make the necessary state agency reference correction, from the DGS to the OCIO, under the 911 Surcharge Act to conform to the GRP 1.

Amendments. The **August 16** amendments provide that these amendments will not become operate if AB 2408 (Symth), which also amends these provisions, is enacted prior to this bill.

Correct a State Agency Reference in the Integrated Waste Management Fee Law
Revenue and Taxation Code Sections 45855, 45863, 45981, and 45982 and Public Resources Code Section 42463

CURRENT LAW

Integrated Waste Management (IWM) Fee Law. Under current law, Division 30 (commencing with Section 40000) of the Public Resources Code (PRC), known as the California Integrated Waste Management Act of 1989, imposes an IWM fee on each operator of a disposal facility based on the amount, by weight or volumetric equivalent, as determined by the Department of Resources Recycling and Recovery (DRRR), of all solid waste disposed of at each disposal site.

The IWM fee is collected and administered by the Board in cooperation with the DRRR pursuant to the Integrated Waste Management Fee Law (Part 23 (commencing with Section 45001) of Division 2 of the RTC).

Covered Electronic Waste Recycling Fee (eWaste Act). Under existing law, the eWaste Act (Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the PRC) requires a consumer to pay a fee of a specified amount upon the purchase of a new or refurbished covered electronic device.

The Board collects and administers the eWaste fees in partnership with the DRRR. For purposes of the eWaste Act, PRC Section 42463 contains definitions for various terms, including, but not limited to, the term "board," which is defined to mean the CIWMB. The term "board" is also defined as the DRRR in PRC Section 40110, which governs the California Integrated Waste Management Act of 1989, including the eWaste Act.

PROPOSED LAW

This bill is a housekeeping measure that would amend Sections 45855, 45863, 45981, 45982 of the RTC to simply make the necessary state agency reference correction (from IWMB to the DRRR) to the Integrated Waste Management Fee Law to conform to Senate Bill 63.

This bill would also amend Section 42463 of the PRC, to delete the definition of "board" contained in the eWaste Act in the PRC. The term is already correctly defined in the California Integrated Waste Management Act of 1989 (Section 40110), which governs the eWaste Act.

BACKGROUND

Effective January 1, 2010, Senate Bill 63 (Chapter 21, Statutes of 2009), among other things, abolished the CIWMB and transferred its duties and responsibilities to the DRRR, within the California Natural Resources Agency, which the bill also created.

Among other things, Senate Bill 63 amended various sections of the PRC and the Government Code to replace "CIWMB" with "DRRR," including PRC Section 40400, which now reads, in part: "Any reference in any law or regulation to the … California Integrated Waste Management Board shall hereafter apply to the Department of Resources Recycling and Recovery." Section 40401 was likewise amended to read, in part: "Except as otherwise specified by statute, the Department of Resources Recycling and Recovery succeeds to and is vested with all of the authority, duties, powers, purposes, responsibilities, and jurisdiction of the former California Integrated Waste Management Board."

Senate Bill 63 did not, however, amend any of the RTC sections of the Integrated Waste Management Fee Law that reference the CIWMB. Senate Bill 63 also did not revise the definition of "board" for purposes of the eWaste Act.

COMMENT

Purpose. This provision would simply make the necessary state agency reference correction (from IWMB to the DRRR) to the Integrated Waste Management Fee Law in the RTC to conform to Senate Bill 63.

This bill would also delete the definition of "board" contained in the eWaste Act in the PRC. The term is already correctly defined in the California Integrated Waste Management Act of 1989 (Section 40110), which governs the eWaste Act.

COST ESTIMATE

The Board would incur some minor absorbable costs in informing and advising county assessors, the public, and staff of the law changes and addressing ongoing implementation issues and questions. These costs are estimated to be under $10,000.

REVENUE ESTIMATE

This bill has no direct revenue impact.